

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Cablevision of New Jersey, LLC)	MB Docket No. 14-94
For a Determination of Effective Competition in the)	CSR No. 8881-E
System-Wide Franchise Area Comprised of)	
)	
Bergenfield Borough, NJ	CUID NJ0145) PSID No. 007311
Closter Borough, NJ	CUID NJ0374)
Demarest Borough, NJ	CUID NJ0293)
Dumont Borough, NJ	CUID NJ0211)
Emerson Borough, NJ	CUID NJ0375)
Fair Lawn Borough, NJ	CUID NJ0259)
Harrington Park Borough, NJ	CUID NJ0448)
Haworth Borough, NJ	CUID NJ0451)
Hillsdale Borough, NJ	CUID NJ0373)
New Milford Borough, NJ	CUID NJ0207)
Northvale Borough, NJ	CUID NJ0450)
Norwood Borough, NJ	CUID NJ0449)
Old Tappan Borough, NJ	CUID NJ0425)
Oradell Borough, NJ	CUID NJ0260)
Paramus Borough, NJ	CUID NJ0311)
River Vale Township, NJ	CUID NJ0420)
Rockleigh Borough, NJ	CUID NJ0585)
Saddle River Borough, NJ	CUID NJ0584)
Tenafly Borough, NJ	CUID NJ0217)
Woodcliff Lake Borough, NJ	CUID NJ0426)

To: Chief, Media Bureau

**REPLY TO COMMENTS ON
PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION**

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August 18, 2014

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PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION**

Cablevision of New Jersey, LLC (“Cablevision”) hereby submits this Reply to the comments filed by the New Jersey Division of Rate Counsel (“Rate Counsel”) in the above-captioned matters. On June 13, 2014, Cablevision filed a Petition for Determination of Effective Competition (“Petition”) to request that the Federal Communications Commission (“FCC” or “Commission”) confirm that Cablevision faces effective competition within its system-wide

franchise area in Bergen County, New Jersey (“Bergen System-Wide Franchise Area”).^{1/} The Commission issued a notice on June 19, 2014 seeking comments on Cablevision’s Petition. On August 7, 2014, Rate Counsel filed an opposition to Cablevision’s Petition (“Opposition”).^{2/}

INTRODUCTION AND SUMMARY

Rate Counsel’s objections are predicated upon an inaccurate characterization of the franchise area at issue in this proceeding, and a misapplication of the evidentiary showing required to meet the local exchange carrier test (“LEC test”) for effective competition. Contrary to Rate Counsel’s suggestion,^{3/} the “franchise area at issue” in this Petition is not the Borough of Tenaflly – whose municipal franchise agreement with Cablevision was terminated by operation of New Jersey law when Cablevision added it to the Bergen system-wide franchise – but is instead the 20-town geographic area encompassed by the Bergen System-Wide Franchise Area. Indeed, the Board of Public Utilities, the local franchising authority in New Jersey, has issued five orders ratifying the conversion of those 20 towns into a single, system-wide franchise held by Cablevision of New Jersey. The Commission has previously determined that “a franchise area is the area a system is granted authority to serve in its franchise.”^{4/} It is undisputed that the system-wide franchise granted to Cablevision of New Jersey under State law authorizes Cablevision to serve 20 communities, including Tenaflly. The entirety of that 20-town geographic area – and

^{1/} See *Cablevision of New Jersey, LLC Petition for Determination of Effective Competition*, MB Docket Nos. 14-94, 12-1 (filed June 13, 2014) (“Petition”).

^{2/} See Comments of the New Jersey Division of Rate Counsel in Opposition to Cablevision of New Jersey, LLC’s Petition for a Determination of Effective Competition in the System-Wide Franchise Area of the Borough of Tenaflly, Bergen County, New Jersey, MB Docket No. 14-94 (filed Aug. 7, 2014) (“Opposition”). In response to a June 19 query from Rate Counsel, Cablevision indicated that it would not object to Rate Counsel’s request to extend the time for responding to the Petition until August 8.

^{3/} Opposition at 2.

^{4/} *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, 9 FCC Rcd. 1164, ¶ 24 (1994).

not Tenaflly alone – constitutes the operative franchise area for purposes of the Commission’s rules and the instant Petition. Accordingly, Rate Counsel’s sole focus on the competitive circumstances in Tenaflly is misplaced, because the geographic scope of the franchise area at issue here is far broader.

Rate Counsel’s pleading fails to offer any evidence refuting Cablevision’s showings that Verizon is offering competing cable service to a substantial majority of the households in the Bergen System-Wide Franchise Area and that Verizon’s cable system substantially overlaps Cablevision’s in the 20-community geographic area that comprises the franchise. Instead, the Opposition relies principally on two arguments previously found unavailing by the Commission. In prior proceedings, the Commission rejected Rate Counsel’s contention (reiterated in the Opposition) that Cablevision must proffer specific evidence of subscribership in the franchise area at issue under the LEC test.^{5/} The Commission has also previously rejected Rate Counsel’s argument that the applicability of the LEC test must be decided by the full Commission – and not the Bureau – because a finding of effective competition cannot be based upon a telco competitor that is a statewide franchisee.^{6/} Because there is Commission precedent directly on point, Rate Counsel is incorrect to describe this Petition as a matter of first impression, and the Opposition offers no evidence or arguments that warrant revisiting the Commission’s previous determination.

^{5/} See, e.g., *Subsidiaries of Cablevision Systems Corporation, Petitions for Determination of Effective Competition in 101 Communities in New Jersey*, 23 FCC Rcd. 14141, ¶ 40 (2008) (“*Cablevision Subsidiaries*”); *Cablevision of Oakland Inc., and CSC TKR Inc., Petition for Determination of Effective Competition in Four Communities in New Jersey*, 24 FCC Rcd. 1801, ¶ 6 (2009) (“*Cablevision of Oakland*”); *Comcast Cable Communications, LLC on Behalf of Subsidiaries and Affiliates, Petitions for Determination of Effective Competition in 107 Franchise Areas*, 24 FCC Rcd. 1780, ¶¶ 33-35 (2009) (“*Comcast 2009 Order*”).

^{6/} See *Cablevision Subsidiaries* ¶ 40; *Cablevision of Oakland* ¶ 6; *CSC TKR, Inc., Petition of Effective Competition in Highland Park Borough, New Jersey*, 25 FCC Rcd. 4948, ¶ 8 (2010) (“*CSC Highland Park*”).

The Petition contains specific and uncontroverted evidence demonstrating that Verizon offers service to a substantial number of households in the Bergen System-Wide Franchise Area, sufficient to meet the LEC test. Accordingly, the Commission should grant the Petition.

I. THE OPPOSITION FAILS TO REFUTE CABLEVISION’S SHOWING THAT THE LEC TEST IS MET IN THE OPERATIVE FRANCHISE AREA AS A RESULT OF COMPETITION FROM VERIZON

A. Rate Counsel Misapprehends the Scope of the Franchise Area That Is the Subject of the Petition

The Petition showed that, pursuant to changes to New Jersey law enacted in 2006, incumbent cable operators like Cablevision are authorized to convert their existing municipal franchises into one or more system-wide franchises, which may be defined on a regional or statewide basis.^{7/} Under the statute, once an incumbent cable operator files the requisite notice of conversion with the Board of Public Utilities (“BPU” or “Board”), the municipal franchise for the affected locality is “automatically convert[ed] . . . without the need for consent of the board or the affected municipality.”^{8/} Cable operators also may, “at any time,” convert additional communities and incorporate them into the service area of an established system-wide franchise, which terminates the formerly-operative municipal-based franchise.^{9/}

Cablevision has “converted” 20 of its existing municipal franchises into a single, regional, system-wide franchise consisting of the following communities: Bergenfield, Closter, Demarest, Dumont, Emerson, Fair Lawn, Harrington Park, Haworth, Hillsdale, New Milford, Northvale, Norwood, Old Tappan, Oradell, Paramus, River Vale, Rockleigh, Saddle River,

^{7/} Petition at 2-4.

^{8/} N.J.S.A. § 48:5A-25.1(a).

^{9/} Petition at 3-4.

Tenaflly, and Woodcliff Lake.^{10/} That single, aggregate area constitutes the franchise area for purposes of the instant petition, because that is the area that Cablevision is authorized to serve pursuant to the Bergen system-wide Franchise established in accordance with New Jersey law.^{11/}

Rate Counsel does not actually contest the record evidence showing that Verizon's FiOS TV is offered widely throughout the Bergen System-Wide Franchise Area.^{12/} Instead, Rate Counsel effectively seeks to redefine the relevant franchise area covered by the Petition by referring throughout its Opposition to Tenaflly as the "franchise area at issue."^{13/} In fact, the Borough of Tenaflly is not the franchise area for purposes of this Petition.

Cablevision filed a notice of conversion for Tenaflly with the BPU on June 12, 2014, and under New Jersey law that notice "automatically" converted the Tenaflly municipal franchise into the Bergen system-wide franchise.^{14/} The BPU ratified the Tenaflly conversion, which by

^{10/} See Declaration of Paul Jamieson, Cablevision Systems Corporation, ¶¶ 1-2 ("Jamieson Declaration"), attached as Exhibit 1 to the Petition; see also Petition at Exhibits 7 and 8 (showing conversion of the municipal franchises into the 20-town Bergen System-Wide Franchise Area).

^{11/} See *In the Matter of: Mediacom Minnesota LLC; Petition for Determination of Effective Competition and Revocation of Certification in Sixteen Minnesota Communities*, 20 FCC Rcd. 4984, ¶¶ 3-4 (2005) (Concluding, on the basis of the "applicable legal documents," that 16 separate "communities at issue are encompassed by a single Franchise Area"); *Mediacom Delaware LLC; Petition for Determination of Effective Competition in the Unincorporated Unnamed Areas of Sussex County, DE*, 26 FCC Rcd. 3668, n.1 (2011) (noting that three separate "unincorporated areas that are the subject of this Petition are treated as one franchise area because the unincorporated unnamed areas of Sussex County and the unincorporated area known as Clarksville are served under a single Franchise Agreement even though these areas are identified by three separate CUID numbers").

^{12/} Indeed, Rate Counsel does not challenge any of the salient facts in the Petition demonstrating that the LEC test is met the Bergen System-Wide Franchise Area. See Petition at 6-14. The Opposition does not dispute that Verizon is a local exchange carrier that is physically able to offer its FiOS TV service to subscribers in the Bergen System-Wide Franchise Area. Nor does Rate Counsel claim that there are regulatory, technical, or other impediments to households in the Bergen System-Wide Franchise Area taking service from Verizon. Moreover, Rate Counsel does not challenge Cablevision's showing that the service areas of Verizon and Cablevision substantially overlap in the Bergen System-Wide Franchise Area, that Verizon is marketing FiOS TV to households within that 20-town franchise area, and that the video programming offered by Verizon is comparable to Cablevision's.

^{13/} Opposition at 2; see *id.* at 8-9.

^{14/} N.J.S.A. § 48:5A-25.1(a); see also Petition at 3-4.

operation of State law was effective on June 12 when Cablevision provided its notice to the Board, by Order dated July 23, 2014.^{15/} Indeed, the BPU Order ratifying the Tenaflly conversion expressly notes that the 2006 Act “allows a cable television company, operating under a municipal consent-based franchise, to ‘automatically convert’ in any or all of its municipalities *without approval from the Board* or the impacted municipalities.”^{16/} Further, the Board’s ratification order recognized that the result of Cablevision’s notice was that the company had “now converted” Tenaflly to a system-wide franchise,^{17/} and that the municipal-based Certificate of Approval for the Borough had been “terminated.”^{18/} The franchise recognized by New Jersey law, and the only franchise area before the Commission in this proceeding, is the Bergen system-wide franchise.

Rate Counsel does not actually dispute the Petition’s description of the manner in which the New Jersey system-wide franchise law operates, or the mechanics of Cablevision’s conversion of Tenaflly to the Bergen System-Wide Franchise Area. Instead, the Opposition simply reads as if no such conversion ever took place. But that is incorrect as a factual matter and contrary to New Jersey law, which no longer recognizes Tenaflly as a separate “franchise area.”^{19/} Because Tenaflly is now part of a 20-town system-wide franchise area that Cablevision

^{15/} See *Cablevision of New Jersey, Inc. for the Conversion to a System-Wide Franchise in the Borough of Tenaflly*, Docket No. CE09030230 (N.J.B.P.U. July 23, 2014) (“*Tenaflly Conversion Ratification*”) (attached hereto as Exhibit 1). Cablevision notes that the BPU is the local franchising authority for purposes of New Jersey law and has not filed an opposition to the Petition.

^{16/} *Id.* at 2.

^{17/} State law permits system-wide franchisees to convert “additional municipal franchises” into an already-established system-wide franchise “at any time,” *see id.*, upon notice to the Board and affected municipalities. N.J.A.C. § 14:18-14.14(a). In response to such a notice, the Board issues “an amended order which specifies which municipalities have been added to the system-wide franchise.” *Id.*

^{18/} *Tenaflly Conversion Ratification* at 2.

^{19/} See Petition at 2-5.

is authorized to establish under New Jersey law, that franchise area is the relevant geographic area for purposes of the instant effective competition petition.^{20/}

B. Verizon's Service Is "Offered" to Residents of the Bergen System-Wide Franchise Area for Purposes of the Commission's Rules and Cablevision Is Not Required to Make a Showing Specific to Tenaflly

Under the Act and the Commission's rules, the LEC test is met if a local exchange carrier "offers [comparable] video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area."^{21/} Cablevision's Petition contained evidence showing that Verizon's FiOS TV service is offered to over 60% of the households that make up the entirety of the Bergen System-Wide Franchise Area^{22/} – a showing that is undisputed by Rate Counsel in its Opposition. Instead, Rate Counsel contends that Cablevision has not satisfied the LEC test because it has not shown actual FiOS TV subscribership in Tenaflly or otherwise offered evidence specific to Tenaflly regarding Verizon's offering of cable service.^{23/} As established, however, the operative franchise area is the entire geographic area encompassed by all the communities within the Bergen System-Wide Franchise Area, and under

^{20/} See *supra*, note 10. See also *CoxCom LLC d/b/a Cox Communications New England*, 28 FCC Rcd. 9312, n.1 (2013) ("According to Petitioner, its television system in Newport County, Rhode Island serves the following communities: Newport (RI0027), Jamestown (RI0030), Middletown (RI0028), Portsmouth (RI0026), Tiverton (RI0025), and Little Compton (RI0029). . . . These communities collectively comprise the Rhode Island Area 7 Franchise Area, as defined in Petitioner's franchise agreement and as determined by the State of Rhode Island Division of Public Utilities and Carriers.")

^{21/} 47 U.S.C. § 543(l)(1)(D); 47 C.F.R. § 76.905(b)(4).

^{22/} See Petition at 11; *id.* at n.41. See also Petition at Exhibit 6.

^{23/} The fact that Tenaflly is not one of the 70 must-build communities under Verizon's franchise has no bearing on whether the LEC test is met in the operative franchise area. Cf. Opposition at 7. Verizon's system-wide franchise consists of 379 municipalities in New Jersey, the vast majority of which are not among the 70 communities that Verizon was required to provide cable service to under the New Jersey System-Wide Cable Television Franchise Act of 2006. See Petition at 9, n.29. In any event, the issue for purposes of determining the instant effective competition petition is not the level of competition from Verizon in Tenaflly, but the level of effective competition from Verizon in the entirety of the 20-town franchise area of which Tenaflly is just a part.

Commission precedent, Cablevision's showing is sufficient to meet the LEC test as to that franchise area.^{24/}

The Commission previously has granted effective competition in circumstances where the petitioning cable operator served a multi-town franchise area,^{25/} and it has rejected suggestions that the petitioning cable operator be required to make a separate showing of effective competition in each town within the multi-town franchise area.^{26/} The circumstances in a subset or constituent part of a multi-town franchise area are of no moment (just as the circumstances in a particular neighborhood of a single-town franchise area are not dispositive), as long as the franchise area as a whole meets the test for effective competition.^{27/}

Rate Counsel's argument that Cablevision's Petition lacks evidence of actual subscribership is both inapposite and inaccurate.^{28/} The Commission previously has rejected similar arguments made by Rate Counsel with respect to Verizon's provision of service, finding instead, based on the same evidence Cablevision provides in the instant Petition, that Verizon's

^{24/} See also *CSC Highland Park* ¶ 10 ("precedent makes clear that a cable operator claiming LEC effective competition need not show that the LEC is offering service throughout the cable operator's territory. When the Commission first implemented the LEC test, it stated several ways that a cable operator might show that a LEC was serving enough territory to pass the test. The Commission mentioned 'widespread availability' and a requirement that 'the LEC's service must substantially overlap the incumbent cable operator's service,' and even contemplated LEC effective competition existing '[i]f the LEC has not shown its intention to offer service that substantially overlaps the incumbent cable operator's service in the franchise area.'").

^{25/} See Petition at n.13.

^{26/} See e.g., *Cablevision Systems of Connecticut, L.P.; Petition for Determination of Effective Competition*, 14 FCC Rcd. 15253 ¶ 20 (1999) ("*Cablevision Norwalk*") (expressly rejecting the argument that Cablevision should separately demonstrate effective competition in each community within its multi-town franchise area, holding instead that "a demonstration that effective competition exists on a franchise-wide basis" would suffice); *Cablevision Systems of Connecticut, L.P.; Petition for Determination of Effective Competition*, 14 FCC Rcd. 15883, ¶ 21 (1999) ("*Cablevision Fairfield*") (same).

^{27/} See *Cablevision Subsidiaries* ¶ 43; *Buckeye Cablevision, Inc., Petition for Determination of Effective Competition in Various Ohio Communities*, 25 FCC Rcd. 2361, ¶ 6 (2010) ("[A] cable operator need not prove that a competing LEC is providing service throughout its service area.").

^{28/} Opposition at 8-9.

video service offering in the franchise areas at issue met the LEC test.^{29/} Like those petitions, Cablevision here has demonstrated that Verizon is present and offering service to a substantial number of households in the relevant franchise area, that Verizon is publicizing its service, and that customers are aware of and responding to Verizon's offers.^{30/}

Rate Counsel's general reliance on *Marcus Cable Associates* for the proposition that Cablevision must provide evidence of subscribership is misplaced. As recognized by the Commission, the statute and the LEC test do not require that "a LEC's service reach a certain level of subscribership" or prove that a competing LEC is providing service in every portion of the franchise area at issue in order to find effective competition.^{31/} To the contrary, the 2010 *CSC Highland Park* Order expressly stated that: "Nowhere did the Commission require that a LEC's service be available everywhere in the incumbent cable operator's franchise area."^{32/} Accordingly, Rate Counsel's objections are without merit.^{33/}

^{29/} See *Cablevision Subsidiaries* ¶¶ 42-43; *CSC Highland Park* ¶ 11; *Cablevision of Oakland* ¶ 6.

^{30/} Petition at 6-14 and Exhibit 1.

^{31/} *Cablevision Subsidiaries* ¶ 43; *In the Matter of Armstrong Communications, Inc., Mount Pleasant Township*, 16 FCC Rcd. 1039, ¶ 9 (2001) (stating that the LEC test "does not specify any minimum amount of service to be offered by the LEC or include any penetration standard," but simply requires "that the offering be substantially more than *de minimis*").

^{32/} *CSC Highland Park* ¶ 10.

^{33/} Rate Counsel's contentions regarding DBS subscribership in Tenaflly are both irrelevant and inaccurate. See Opposition at 8-9; *id.* at Exhibit B. DBS subscribership is not relevant to the instant Petition, since Cablevision seeks a finding of effective competition based upon the LEC test. See *Comcast 2009 Order* ¶ 36 ("Furthermore, issues of subscribership data do not even arise under the LEC test."). In any event, the Commission should not heed Rate Counsel's claim that there are no DBS subscribers in Tenaflly. That claim is based upon a query to SBCA for DBS subscribership in a single zip+4 within Tenaflly. See Opposition at Exhibit B (showing DBS subscriber counts for only one zip+4 in Tenaflly, 07670-0910). There are, in fact, a considerable number of zip+4s within Tenaflly that were not included in Rate Counsel's request to SBCA. See, e.g., Post Code Base, New Jersey U.S. ZIP Code 5 Plus 4, City of Tenaflly, http://nj.postcodebase.com/category/city_name/TENAFLY (last visited Aug. 12, 2014). Further, both DirecTV and Dish Network market their service in Tenaflly and it strains credulity to suggest that they have attained no subscribers in the entire Borough.

II. COMMISSION PRECEDENT ESTABLISHES THAT EFFECTIVE COMPETITION PETITIONS MAY BE GRANTED ON THE BASIS OF LECs OFFERING VIDEO SERVICE UNDER A STATEWIDE FRANCHISE

Rate Counsel argues that full Commission review is warranted because the question of whether the LEC test should apply to statewide franchise systems is an issue of “first impression,” and that Bureau rulings to the contrary are incorrect.^{34/} This argument is without merit both procedurally and substantively, and has been rejected by the Commission on several occasions.^{35/}

Contrary to Rate Counsel’s claim, this is not an issue of “first impression” that must be addressed by the full Commission or otherwise accorded special consideration.^{36/} In fact, since the 1990s, the Commission has specifically found that the LEC test applies when the local exchange carrier in question has a statewide franchise. In 1999, the Commission granted two petitions filed by affiliates of Cablevision seeking a determination of effective competition under

^{34/} Opposition at 4-7. Bureau decisions constitute valid orders of the Commission that have the force of law and should be adhered to by parties in proceedings before the Commission. *See Comcast Corp. v. FCC*, 526 F.3d 763 (D.C. Cir. 2008) (stating that “in the absence of Commission action to the contrary, the Media Bureau decisions have the force of law”); *Indiana Bell Tel. Co. v. McCarty*, 362 F.3d 378, 386-87 (7th Cir. 2004) (characterizing a Bureau decision as “one requiring deference as the voice of the FCC interpreting its own rules” and noting that, “according to the FCC’s rules on delegation of authority,” the Bureau “literally stepped into the shoes of the FCC when it assumed responsibility”); *see also* 47 U.S.C. §155(c)(3) (stating that any “order, decision, report, or action made or taken pursuant to any such delegation . . . shall have the same force and effect, and shall be made evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission”).

^{35/} *See Cablevision Subsidiaries* ¶ 40; *Cablevision of Oakland* ¶ 6; *CSC Highland Park* ¶ 8.

^{36/} As the Bureau observed in another New Jersey effective competition order in which Rate Counsel urged that its objections be addressed by the full Commission, rather than the Bureau:

“It is within our delegated authority to decide that a statute which, by its own plain words, does not require a LEC to have any kind of franchise does not require it to have a certain kind of franchise, and that a Commission-adopted rule that makes no mention of PEG channels does not require PEG channels. For the Bureau to defer the resolution of any such issues until the full Commission can attend to them would, in effect, require a decision by the full Commission in every case and would render delegated authority a practical nullity.”

Time Warner Cable, Inc. Petition for Determination of Effective Competition in Nine Franchise Areas in New Jersey, 25 FCC Rcd. 5457, ¶ 31 (2010).

the LEC test based on the statewide video franchise granted to the Southern New England Telephone Company in the state of Connecticut.^{37/}

The Commission has upheld this precedent in numerous effective competition orders,^{38/} and Rate Counsel has offered no basis for the Commission to find any differently here. Nothing in the Cable Act states that the effective competition can be satisfied only if a competitor holds the same local service video franchise area as the cable operator, and Rate Counsel cites no statutory language or legislative history to support its claim. Congress could have easily directed the Commission to limit the applicability of the LEC test in the manner suggested by Rate Counsel, but there is nothing in the text of the statute or legislative history that suggests any such limitation. To the contrary, the effective competition standard adopted by Congress expressly contemplates that unfranchised Direct Broadcast Satellite (“DBS”) providers – with national networks and service footprints – can satisfy the Competing Provider Test.^{39/}

In addition, Rate Counsel’s citation to *Service Electric* provides no support for its position that the LEC test cannot be applied where a telephone company is providing competing service pursuant to a statewide franchise.^{40/} In *Service Electric*, the cable operator sought a determination of effective competition based on aggregate DBS penetration for a combination of

^{37/} See *supra*, note 23; *Cablevision Fairfield*; *Cablevision Norwalk*.

^{38/} *Comcast 2009 Order* ¶ 33 (“[Rate Counsel] has given us neither legislative history nor reasoning indicating that LEC competition may be found only with reference to types of franchises that existed at the statute’s enactment. In fact, we have found LEC effective competition in previous cases based on a statewide franchise.”); see also *Cablevision of Connecticut, L.P. and Cablevision Systems of Southern Connecticut, L.P. Petition for Determination of Effective Competition in Various Connecticut Communities*, 23 FCC Rcd. 8538 (2008); *Cablevision Subsidiaries* ¶ 40.

^{39/} See 47 U.S.C. § 543(l)(1)(B) (authorizing a finding of effective competition based upon 15% penetration in a franchise area from competing MVPDs); 47 U.S.C. § 522(13) (defining MVPD to include DBS providers).

^{40/} Opposition at 5-7. See *Cablevision Subsidiaries* ¶ 40; *Comcast 2009 Order* ¶ 36 (“Service Electric Cable TV of New Jersey is not applicable in this case since it does not concern the LEC test, which we are addressing here.”).

26 separate franchise areas, without showing that the 15% threshold was met in each individual franchise area.^{41/} Here, by contrast, Cablevision demonstrated that the LEC test for effective competition has been met in the single franchise area at issue here – the Bergen System-Wide Franchise Area – due to the presence of competition from Verizon in the area. If anything, the *Service Electric* order supports grant of the instant Petition, since it notes that the aggregation of data from multiple communities for purposes of determining effective competition is permissible where, as here, the multiple communities make up a single franchise area.^{42/}

^{41/} *Service Electric Cable TV of New Jersey, Inc.; Petition for Determination of Effective Competition in Twenty-Six Local Franchise Areas*, 20 FCC Rcd. 20532, ¶¶ 5-6 (2005).

^{42/} *See id.* ¶ 7 (distinguishing ruling in *Service Electric* from another effective competition decision in which “the aggregation of data with respect to multiple CUIDs was appropriate and, indeed, necessary because there was a single franchise area at issue”).

CONCLUSION

For the foregoing reasons, and those contained in Cablevision's Petition, Cablevision's Petition for a Determination of Effective Competition for the Bergen System-Wide Franchise Area should be granted.^{43/}

Respectfully submitted,

/s/

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August 18, 2014

^{43/} Rate Counsel's August 15 Supplement provides no new information or arguments beyond that which was already set forth in its August 7 Opposition. The Supplement continues to focus solely on the Borough of Tenaflly. However, as demonstrated here and in the Petition, Tenaflly is not the franchise area for purposes of this proceeding. Cablevision's Petition did not address Verizon's provision of service within Tenaflly itself – since that is not the franchise area – but instead provided data showing that Verizon is offering service to over 60% of the households in the total 20-town Bergen System-Wide Franchise Area. Notably, nothing in Rate Counsel's Opposition, or its Supplement, disputes that showing.

Exhibits

Exhibit 1 - New Jersey Board of Public Utilities Conversion Order for the Borough of
Tenafly

Exhibit 1



Agenda Date: 7/23/14
Agenda Item: IIIC

STATE OF NEW JERSEY
Board of Public Utilities
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CABLE TELEVISION

IN THE MATTER OF THE PETITION OF)	FIFTH ORDER OF AMENDMENT
CABLEVISION OF NEW JERSEY, LLC FOR THE)	
CONVERSION TO A SYSTEM-WIDE FRANCHISE)	
IN THE BOROUGH OF TENAFLY)	DOCKET NO. CE09030230

Parties of Record:

Adam Falk, Vice President, Government & Public Affairs, Cablevision Systems Corporation
Lisette Aportela-Hernandez, Clerk, Borough of Tenafly, New Jersey

BY THE BOARD:

On June 10, 2009, the Board of Public Utilities ("Board") issued an order memorializing the conversion by Cablevision of New Jersey, Inc. ("CVNJ, Inc.") of its municipal consent-based franchise in the Borough of Fair Lawn to a System-wide Franchise in the above referenced docket number for a term of seven years to expire on March 20, 2016. Subsequently, CVNJ, Inc. underwent a name change and is now known as Cablevision of New Jersey, LLC ("Cablevision of New Jersey"). On August 4, 2010, the Board issued an Order of Amendment to include six additional municipalities: the Borough of Bergenfield, the Borough of Dumont, the Borough of Haworth, the Borough of Hillsdale, the Borough of Oradell and the Borough of Paramus. On September 16, 2010, the Board issued a Second Order of Amendment to include five additional municipalities: the Borough of Closter, the Borough of Emerson, the Borough of Norwood, the Borough of Rockleigh and the Borough of Woodcliff Lake. On November 10, 2010, the Board issued a Third Order of Amendment to include the Borough of Saddle River and the Township of River Vale. On February 10, 2011, The Board issued a Fourth Order of Amendment to include the Borough of Demarest, the Borough of Harrington Park, the Borough of New Milford and the Borough of Northvale.

Pursuant to N.J.S.A. 48:5A-25.1 and N.J.A.C. 14:18-14.13, a cable television operator with a municipal consent-based franchise or franchises issued prior to the effective date of P.L. 2006, c. 83 ("System-wide Cable Television Franchise Act" or "Act") may automatically convert any or all of its municipal consent-based franchises upon notice to the Board and to the affected municipality or municipalities. In addition, pursuant to N.J.A.C. 14:18-14.14, a cable television company operating under a system-wide franchise may add municipalities to its system-wide franchise upon notice to the affected municipality or municipalities and the Board.

On June 12, 2014, Cablevision of New Jersey filed notice with the Borough of Tenaflly that it would convert its municipal consent-based franchise in the Borough, thereby making them part of its Cablevision of New Jersey system-wide franchise, and it confirmed that it would abide by the provisions of N.J.S.A. 48:5A-28 (h)-(n), as required by the System-wide Cable Television Franchise Act. That notice was received by the Board on June 13, 2014.

DISCUSSION

Under N.J.S.A. 48:5A-25.1, a cable television operator with a municipal consent-based franchise or franchises issued prior to the effective date of the Act may automatically convert any or all of its municipal consent-based franchises upon notice to the Board and to the Borough of Tenaflly without meeting the requirements applicable to cable television operators applying for a system-wide franchise, except that the commitment requirements under N.J.S.A. 48:5A-28 (h)-(n) shall be applicable to all system-wide franchises, including conversions. N.J.S.A. 48:5A-28(h)-(n) impose requirements on all cable television companies operating under a system-wide franchise and includes commitments as to line extensions; public, educational and governmental ("PEG") access channels; interconnection with other cable television companies; free cable and Internet service to public schools and municipal buildings; training and equipment for access users; PEG access return feeds; and compliance with customer protection regulations. As noted above, Cablevision of New Jersey has committed to provide service to the Borough of Tenaflly as required by these provisions.

DISPOSITION OF CERTIFICATE OF APPROVAL AND UNDERLYING MUNICIPAL CONSENT

As discussed above, the Act allows a cable television company, operating under a municipal consent-based franchise, to "automatically convert" its system in any or all of its municipalities without approval from the Board or the impacted municipalities. N.J.S.A. 48:5A-25.1(a). Furthermore, N.J.S.A. 48:5A-19 provides that a "certificate of approval issued by the board shall be valid for 15 years from the date of issuance... or until the expiration, revocation, termination or renegotiation of any municipal consent upon which it is based, whichever is sooner."

Cablevision of New Jersey's Certificate of Approval and the underlying municipal consent ordinance in the Borough of Tenaflly was set to expire on February 10, 2020. Because Cablevision of New Jersey has now converted the municipal consent based-franchises in the Borough of Tenaflly to a system-wide franchise, pursuant to N.J.S.A. 48:5A-19 and N.J.S.A. 48:5A-25.1(a), the Board **FINDS** that Cablevision of New Jersey's Certificate of Approval for the Borough of Tenaflly is hereby terminated.

Cablevision of New Jersey is authorized to provide cable television service to the Borough of Tenaflly, pursuant to its converted System-wide franchise and the requirements of N.J.S.A. 48:5A-28(h)-(n) and applicable law.

With regard to N.J.S.A. 48:5A-28(h), a system-wide cable television franchise operator is required to meet or exceed the line extension policy ("LEP") commitments of the cable television company operating under a municipal consent-based franchise at the time the franchise is granted. Therefore, because Cablevision of New Jersey was the incumbent municipal consent-based franchise holder in the Borough of Tenaflly, it is required to continue to provide, at a minimum, service to any residence in the Borough of Tenaflly in accordance with its policies in effect at the time of conversion. Accordingly, in the Borough of Tenaflly, Cablevision of New Jersey shall provide service to any resident in the municipality at no cost beyond the installation rates contained in its schedule of prices, rates, terms and conditions filed with the Board.

Pursuant to N.J.S.A. 48:5A-30(d), Cablevision of New Jersey is **HEREBY REQUIRED** to pay to the Borough of Tenafly each year, beginning from the date of conversion to a system-wide franchise, a sum equal to 3.5 percent of gross revenues, as such term is defined by N.J.S.A. 48:5A-3(x), derived from cable television service charges or fees paid by subscribers in the municipality to the cable television franchisee, and an additional amount not to exceed one-half of one percent of those gross revenues to the State Treasurer for a "CATV Universal Access Fund" to offset basic cable television service rates for low income (Pharmaceutical Assistance to the Aged and Disabled eligible) seniors and disabled persons.

Based upon the elements of the System-wide Franchise, and the legal mandates under which the Board operates, this Order **HEREBY RATIFIES** the addition of the Borough of Tenafly to Cablevision of New Jersey's System-wide Franchise.

This Fifth Order of Amendment to the System-wide Franchise serves to add the Borough of Tenafly to Cablevision of New Jersey's System-wide Franchise, and does not, in any manner, modify, change or otherwise affect the terms and conditions of that June 10, 2009 Order, except with respect to the LEP and payment of the franchise fee, as discussed above.

Without limitations to the full requirements set forth in that Order, the Board reminds Cablevision of New Jersey that, under the System-wide Franchise, it is subject to all applicable State and federal laws, the rules and regulations of the Office of Cable Television, and any such lawful terms, conditions and limitations as currently exist or may hereafter be attached to the exercise of the privileges granted herein. To the extent possible based upon the technology used in providing service, Cablevision of New Jersey shall adhere to the operating standards set forth by the Federal Communications Commission's rules and regulations, 47 C.F.R. § 76.1 et seq., including, but not limited to, the technical standards 47 C.F.R. § 76.601 through § 76.630. Any modifications to the provisions thereof shall be incorporated into the System-wide Franchise.

Failure to comply with all applicable laws, rules, regulations, or orders of the Board or the Office of Cable Television and/or the terms, conditions, or limitations set forth herein may subject Cablevision of New Jersey to penalties, as enumerated in N.J.S.A. 48:5A-51, and/or may constitute sufficient grounds for the suspension or revocation of the System-wide Franchise.

This Fifth Order of Amendment to the System-wide Franchise is issued on the representation that the statements contained in Cablevision of New Jersey's applications, notices, and other writings are true, and the undertakings therein contained shall be adhered to and be enforceable, unless specific waiver is granted by the Board or the Office of Cable Television pursuant to the authority contained in N.J.S.A. 48:5A-1 et seq.

This Order shall be effective on August 4, 2014.

DATED: 7/23/14

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



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CONVERSION TO A SYSTEM-WIDE FRANCHISE IN THE BOROUGH OF TENAFLY
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CERTIFICATE OF SERVICE

I, Kara D. Romagnino, hereby certify that on this 18th day of August 2014, a copy of the foregoing “Reply to Comments on Petition for Determination of Effective Competition” was sent via U.S. mail, unless otherwise noted, to the following individuals listed below:

Marlene Dortch Secretary Federal Communications Commission 445 12th Street, SW Washington, DC 20554 <i>Via hand delivery</i>	William Lake Chief, Media Bureau Federal Communications Commission 445 12th Street, SW Washington, DC 20554 <i>Via hand delivery</i>
Steve Broecker Senior Deputy Policy Division Chief, Media Bureau Federal Communications Commission 445 12th Street, SW Washington, DC 20554 <i>Via hand delivery</i>	Nancy Murphy Associate Bureau Chief, Media Bureau Federal Communications Commission 445 12th Street, SW Washington, DC 20554 <i>Via hand delivery</i>
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/s/

Kara D. Romagnino